5/7.

SUPREME COURT OF THE UNITED STATES.

No. 136.

LESSEE OF JACOB CHEESMAN & AL., PLAINTIFF IN ERROR,

vs.

THOMAS WATSON.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

INDEX.

	Original.	Print.
Writ of error	1	2
Citation and service	3	3
Declaration	5	4
Issues joined	7	5
Jury sworn	9	5
Bill of exceptions	10	6
Judgment	18	9
Clerk's certificate	18	10

J. & G. S. Gideon, printers.

Writ of error.

UNIED STATES,
Eastern district of Pennsylvania.

The President of the United States, to the judges of the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, greeting:
[L. S.]

Because that, in the record and process, and also in the rendering of judgment, in a suit before you, between John Doe, lessee of Jacob Cheesman, Peter Cheesman and Sarah, his wife, Beersheba Parker, Ward Pearce, John Clark and Margaret, his wife, Ann Jackson, William Jackson, Seward Jackson, and Mary Jackson, Watson and Sarah, his wife, (late Sarah Pearce,) William Pearce, Ward Pearce, Miraba Edwards, James Edwards, Richard Pearce, William, James, and Margaret Pearce, Thomas Morris and Mary, his wife, (late Mary Pearce,) Elizabeth Powell, (late Elizabeth Pearce,) Jacob Williams and Elizabeth Williams, Sarah Smallwood, Deborah Bryant, George L. Hood and Letitia, his wife, in her right, Joseph Smallwood, Joseph Hurff, Jane Turner, John Brown and Mary, his wife, in her right, William Smallwood, Isaac Hurff and Elizabeth, his wife, in her right, Richard Sharp and Mariam, his wife, in her right, Randall Nicholson and Drusella, his wife, in her right, Jacob Mattison and Jemima, his wife, in her right, Joseph Nicholson and Mariam, his wife, in her right, Thomas Pearce, and Matthew Pearce, all citizens of New Jersey, is plaintiff, and Thomas Watson, a citizen of the State of Pennsylvania, is defendant, in a plea of trespass and ejectment, a manifest error has intervened to the great damage of the said plaintiff, as in his complaint has been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded, that if judgment thereof be given, then under your seal you do, distinctly and openly, send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the judges of the Supreme Court of the United States, at the city of Washington, being the seat of [the] National Government, on the first Monday in December next; that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Philadelphia, this fifth day of November, A. D. one thousand eight hundred and forty-six, and in the seventy-first year of the independence of the said United States.

FRA. HOPKINSON, *Clerk circuit court.*

Allowed.

J. K. KANE, *C. C.*

The return to the above writ of error appears by the schedule annexed. FRA. HOPKINSON, *Clerk circuit court*.

November 14th, 1846.

UNITED STATES,
Eastern district of Pennsylvania.

To Thomas Watson.

Whereas by a writ of error, issuing out of the Supreme Court of the U. States, directed to the judges of the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, wherein John Doe, lessee of Jacob Cheesman, Peter Cheesman and Sarah, his wife, Beersheba Parker, Ward Pearce, John Clark and Margaret, his wife, Ann Jackson, William Jackson, Seward Jackson, and Mary Jackson, Watson and Sarah, his wife, (late Sarah Pearce,) William Pearce, Ward Pearce, Miraba Edwards, James Edwards, Richard Pearce, William, James, and Margaret Pearce, Thomas Morris and Mary, his wife, (late Mary Pearce,) Elizabeth Powell, (late Elizabeth Pearce,) Jacob Williams and Elizabeth Williams, Sarah Smallwood, Deborah Bryant, George L. Hood and Letitia, his wife, in her right, Joseph Smallwood, Joseph Hurff, Jane Turner, John Brown and Mary, his wife, in her right, William Smallwood, Isaac Hurff and Elizabeth, his wife, in her right, Richard Sharp and Mariam, his wife, in her right, Randall Nicholson and Drusella, his wife, in her right, Jacob Mattison and Jemima, his wife, in her right, Joseph Nicholson and Mariam, his wife, in her right, Thomas Pearce, and Matthew Pearce, (all citizens of New Jersey,) is the plaintiff, the said judges were directed to send the record and process of a certain suit, with all things concerning them, so that the same may be had before the chief justice and the associate justices of the Supreme Court of the United States, at the city of Washington, being the seat of the National Government, on the first Monday in December next; in which suit the said John Doe, lessee of Jacob Cheesman, Peter Cheesman and Sarah, his wife, Beersheba Parker, Ward Pearce, John Clark and Margaret, his wife, Ann Jackson, William Jackson, Seward Jackson, and Mary Jackson, Watson and Sarah, his wife, (late Sarah Pearce,) William Pearce, Ward Pearce, Miraba Edwards, James Edwards, Richard Pearce, William, James, and Margaret Pearce, Thomas Morris and Mary, his wife, (late Mary Pearce,) Elizabeth Powell, (late Elizabeth Pearce,) Jacob Williams and Elizabeth Williams, Sarah Smallwood, Deborah Bryant, George L. Hood and Letitia, his wife, in her right, Joseph Smallwood, Joseph Hurff, Jane Turner, John Brown and Mary, his wife, in her right, William Smallwood, Isaac Hurff and Elizabeth, his wife, in her right, Richard Sharp and Mariam, his wife, in her right, Randall Nicholson and Drusella, his wife, in her right, Jacob Mattison and Jemima, his wife, in her right, Joseph Nicholson and Mariam, his wife, in her right, Thomas Pearce, and Matthew Pearce, (all citizens of New Jersey,) is the original plaintiff, and you, the said Thomas Watson, *was* defendant, in a plea of trespass and ejectment; that the record and process

aforesaid being inspected, they, the said justices, may cause to be done thereupon what of right ought to be done. And the said plaintiff having made an assignment of errors, you are hereby cited to appear, (if you see cause,) at the said Supreme Court, at the time and place aforesaid, to answer to the said writ of error and the errors assigned by the said plaintiffs in error.

Given under my hand and seal, this fifth day of November, A. D. one thousand eight hundred and forty-six.

J. K. KANE. [L. S.]

1846, November 13, I certify that I have served a true copy of the above citation on Thomas Watson. So answers

GEO. M. KEIM, *U. S. marshal E. D. of Pa.*

Pleas before the honorable the judges of the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, at Philadelphia, of April sessions, 1845, No. 26, it is thus contained:

Thomas Watson, a citizen of the State of Pennsylvania, was attached to answer John Doe, a citizen of the State of New Jersey, of a plea, whereof he, the said Thomas Watson, with force and arms, &c., entered into twenty messuages, twenty cottages, twenty barns, twenty stables, twenty coach-houses, twenty out-houses, twenty yards, twenty gardens, twenty acres of arable land, and twenty acres of other land, with the appurtenances, situate in the city of Philadelphia, in the district aforesaid, with commons thereunto belonging and appertaining, which Jacob Cheesman, and Peter Cheesman and Sarah, his wife, Bersheba Parker, Ward Pearce, John Clarke and Margaret, his wife, Ann Jackson, Joseph Jackson, William Jackson, Seward Jackson, and Mary Jackson, Watson and Sarah, his wife, (late Sarah Pearce,) William Pearc, Ward Pearce, Miraba Edwards, James Pearce, Richard Pearce, William, James, and Margaret Pearce, Thomas Morris and Mary, his wife, (late Mary Pearce,) Elizabeth Powell, (late Elizabeth Pearce,) Jacob Williams and Elizabeth Williams, Sarah Smallwood, Deborah Bryant, George L. Hood and Letitia, his wife, in her right, Joseph Smallwood, Joseph Hurff, Jane Turner, John Brown and Mary, his wife, in her right, William Smallwood, Isaac Hurff and Elizabeth, his wife, in her right, Richard Sharp and Miriam, his wife, in her right, Randall Nicholson and Drusella, his wife, in her right, Jacob Matterson and Jemima, his wife, in her right, Joseph Nicholson and Marian, his wife, in her right, Thomas Pearce, and Matthias Pearce, all citizens of the State of New Jersey, had demised to the said John Doe, for a term which has not yet expired, and ejected him from his said farm, and other wrongs to the said John Doe then and there did to the great damage of the said John Doe, and against the peace of the United States; and thereupon the said John Doe, by D. P. Brown and W. L. Hurst, esqrs., his attornies, complain, for that whereas the said plaintiffs above named on the first day of March, anno domini 1845, at the district aforesaid, in the county aforesaid, had demised the said tenements of the val-

ue of five thousand dollars, with the appurtenances, to the said John Doe; to have and to hold the same to the said John Doe, and his assigns, from the first day of March, in the year aforesaid, and unto the full end and term of seven years from thence next ensuing and fully to be complete and ended. By virtue of which said demise the said John Doe entered into the said tenements, with the appurtenances, and became and was possessed thereof for the said term so to him thereof granted as aforesaid; and the said John Doe being so thereof possessed, the said Thomas Watson afterwards, to wit, on the first day of March, in the year aforesaid, with force and arms, &c., entered into the said tenements, with the appurtenances, in which the said John Doe was so interested in manner and for the term aforesaid, which is not yet expired, and ejected him, the said John Doe, out of his said farm, and other wrongs to the said John Doe then and there did, to the great damage of the said John Doe, and against the peace of the United States.

Wherefore the said John Doe saith that he is injured, and hath sustained damage to the value of five thousand dollars; and thereupon he brings suit, &c.

And thereupon the said Thomas Watson, by William M. Meredith, esq., his attorney, comes and defends the force and injury, when, &c., and saith that he is in no wise guilty of the trespass and ejectment aforesaid as the said John Doe above complains against him, and thereof he puts himself upon the country; and the said John Doe doth the like.

Therefore, let a jury thereupon come before the judges aforesaid, at a session of the same court, to be holden at Philadelphia aforesaid, on the eleventh day of October next, by whom, &c., who neither, &c., to recognise, &c., because as well, &c.; the same day is there given to the parties aforesaid.

On which said eleventh day of October, A. D. 1845, come the parties aforesaid, by their attorneys aforesaid, and further day is given to the parties aforesaid until the eleventh day of April next. Therefore, as before, let a jury thereupon come before the said judges, on the said eleventh day of April, A. D. 1846, by whom, &c., and who neither, &c., to recognise, &c., because as well, &c. The same day is there given to the parties aforesaid, then and there, &c.

On which said eleventh day of April, A. D. 1846, come the parties aforesaid, by their attorneys aforesaid, and further day is given to the parties aforesaid until the twelfth day of October next. Therefore, as before, let a jury come thereupon before the said judges, on the said twelfth day of October, by whom, &c., and who neither, &c., to recognise, &c., because as well, &c., The same day is there given to the parties aforesaid, then and there, &c.

Afterwards, to wit, on the nineteenth day of October, A. D. 1846, at a session of the same court holden at Philadelphia aforesaid, before the judges aforesaid, come the parties aforesaid, by their attorneys aforesaid, and the jurors of the jury aforesaid being called, likewise come, to wit: Stevenson Smith, George Swartz, Thomas Murdock, William Allen, John Whitehead, Alex. Trotter, Thomas Wallace, David Jones, Benj. Wood, Henry McMahon, John G. Pierce, and Charles N. Robbins,

who are duly impannelled, returned, elected, tried, and sworn or affirmed to speak the truth of the matter within contained.

Be it remembered, that in the session of April, anno domini one thousand eight hundred and forty-five, John Doe, lessee of Jacob Cheesman, Peter Cheesman and Sarah, his wife, Bushrod Parker, Ward Pearce, John Clark and Margaret, his wife, Ann Jackson, Joseph Jackson, William Jackson, Seward Jackson, and Mary Jackson, Watson and Sarah, his wife, (late Sarah Pearce,) William Pearce, Ward Pearce, Miraba Edwards, James Pearce, Richard Pearce, William, James, and Margaret Pearce, Thomas Morris and Mary, his wife, (late Mary Pearce,) Elizabeth Powell, (late Elizabeth Pearce,) Jacob Williams and Elizabeth Williams, Sarah Smallwood, Deborah Bryant, George L. Hood and Letetia, his wife, in her right, Joseph Smallwood, Joseph Hurff, Jane Turner, John Brown and Mary, his wife, in her right, William Smallwood, Isaac Hurff and Elizabeth, his wife, in her right, Richard Sharp and Mariam, his wife, in her right, Randall Nicholson and Drusella, his wife, in her right, Jacob Mattison and Jemima, his wife, in her right, Joseph Nicholson and Mariam, his wife, in her right, Thomas Pearce, and Matthew Pearce, all citizens of New Jersey, came into the circuit court of the United States for the eastern district of Pennsylvania, and impleaded Richard Roe, with notice to Thomas Watson, a citizen of the State of Pennsylvania, in a certain plea of ejectment, in which the said plaintiffs declared (prout narr.;) and the said defendants pleaded (prout pleas.) And thereupon issue was joined between them.

And afterwards, to wit, at a session of the said court, held at the city of Philadelphia, in the State of Pennsylvania, before the honorable Robert C. Grier and the honorable John K. Kane, judges of the said court, on the nineteenth day of October, anno domini one thousand eight hundred and forty-six, the aforesaid issue between the said parties came to be tried by a jury of the city and county of Philadelphia, for that purpose duly impannelled, (prout list of jurors.) At which day came as well the said plaintiffs as the said defendant, by their respective attorneys; and the jurors of the jury aforesaid, impannelled to try the said issues, being also called, came, and were then and there in due manner chosen and sworn or affirmed to try the said issue; and upon the trial the counsel of the said plaintiffs gave in evidence a copy, duly certified, of a certain deed from the honorable Thomas Penn and the honorable Richard Penn to James Parrock, dated the fifth day of September, anno domini one thousand seven hundred and forty-nine, (prout the same;) and also a certified copy of the last will and testament of James Parrock, dated the twenty-fourth day of May, anno domini one thousand seven hundred and fifty-four, proved the twenty-fourth day of January, 1755, (prout the same.) And the counsel of said plaintiffs further gave in evidence, from the following witnesses, the following testimony, viz.:

Michael C. Fisher, sworn. "I reside at Woodbury; I was born in Gloucester county; resided there always; I am judge of the common pleas and justice of the peace; I know most of the parties; I was born

within three miles of where the Smallwoods reside; I knew Peter Cheesman whose wife was reputed to be Mary Smallwood; can't tell who was her father and mother; Peter Cheesman left Richard, Thomas, one daughter married John Williams, one Richard Pearce, and one married Jackson; Richard is dead; his sons, Jacob, Peter, Thomas, and Richard; I did not know his daughters; Jacob is dead, Peter is living, Thomas is dead, and Rachel is, I think, out west; I did not know Bersheba Parker.

"Thomas, the second son of Peter Cheesman, is dead; I do not know his family; he had a daughter, I think.

"Mary Ann Jackson is dead; one of her children, Joseph—

"Margaret Pearce is dead; she had a son, Jacob, and also other children.

"Mary Smallwood was a sister of Richard Smallwood; I never heard who was the father of Mary Smallwood."

John C. Smallwood, sworn. "I am 47; I am related to the Smallwood family mentioned in the will; my father was Benjamin Smallwood, my grandfather was Joseph Smallwood, mentioned in the will; Joseph was a son of John Smallwood; Peter Cheesman married Mary, who was a daughter of John Smallwood; I have understood that John Smallwood and James Parrock were half brothers; I have always heard John and Sarah Parrock died without issue; I understood died unmarried; I heard of John Parrock being married; I heard he had no children; I heard he died shortly after 1790; I know Peter Cheesman's father was Richard; I knew Peter's brothers Jacob, Thomas, and Richard, who are dead; I heard there was a sister Beersheba, never heard of her death; I knew B. T. Cheesman and Peter T. Cheeseman; I knew Margaret Pierce, I think she died within a few years; I knew John Clark, I did not know his wife; I knew there was a Mary Ann Jackson; I have heard of Joseph Jackson, and that he was a relative; I have heard of Ann Jackson; I have heard of Margaret Pearce; I knew her children, James, and Richard, and William; I knew a Ward Pearce; did not know the connection; Miraba Pearce married Josiah Edwards, daughter Mary married Thomas Morris; did not know Elizabeth Pearce; I knew a daughter of Sarah Williams, her name was Sarah.

Cross examined—"John Smallwood was dead when the will was made; I understood John Parrock died near Philadelphia; Peter Cheesman and wife were both related to John Parrock; the present Peter Cheesman is the grandson of Peter who married Mary Smallwood; Sarah was the daughter of Mary Smallwood, who was a daughter of Joseph, who was a child of John Smallwood, mentioned in the will; Mary Smallwood, a daughter of Thomas, married a man named Brown; one of the children married a Ward, and one of the Wards married a Pearce; I don't know whether a Pearce first or Ward afterwards; I don't know the connection of John Clark; I know there is a Miraba Pearce, also a relation, and from the Smallwood stock; James Pearce, also from same stock; I know Richard Pearce, also from same stock; William James also; Thomas Morris and Mary, his wife, also reputed descendants of

Smallwoods; I understood John Parrock to have been a married man; he was advanced in years when he died."

David B. Morgan, sworn. "I am 61; I resided all my life, except the last seven years, in Gloucester county, New Jersey; I was judge of county court; I knew Peter Cheesman, who married Mary Smallwood, only from report; he married a Smallwood, a sister of Richard Smallwood; Peter Cheesman had a son called Richard; I heard of Thomas; I have heard of Mary Ann, who married Jackson; I have heard of Margaret, who married Pearce; two of the Cheesmans, daughters, married two of the Pearces, William and Henry; I may be wrong.

"I knew Peter Cheesman, son of Richard; Sarah, his wife, also, she was a cousin; I knew Beersheba Parker, daughter of Richard Cheesman; Mr. Parker moved west many years.

"I knew Thomas Cheesman and his children only from representation; I knew a Ward Pearce from hearsay; I knew Margaret, who married John Clark, she was a Pearce, I think; there was a Miraba Pearce, who married Edward.

"I knew Mary Ann Jackson only from hearsay, she had a daughter Ann; never heard of Joseph nor William, nor Seward, nor Mary.

"I knew Margaret Pearce; her daughter Sarah married Watson; I knew William Pearce; I knew Ward; also daughter Miraba, who married Edward; I knew her son James; also Richard; Martha also, by reputation; I knew Mary, who married Thomas Morris; I knew Elizabeth, who married Powell, she is a widow; I can't recollect Sarah.

Cross examined. "I knew Peter Cheesman, the elder; he had Richard, also two daughters, who married two of the Pearces; I knew Thomas from hearsay.

"Richard had one son, Jacob; Peter, Thomas and Richard; Mr. Parker's wife, I think, was one of his daughters.

"Jacob is dead, and I think left issue; can't say who they were; I heard of his having had children; can't remember how many.

"Peter is living, or was a few weeks ago.

"Thomas is deceased some years ago; left 4 or 5 children; can't say whether they are plaintiffs.

"Richard Cheesman is dead many years ago; he had children before he left; he married a Cheesman.

"Beersheba went to the west many years ago; I have not heard from her within seven years.

"I can't say whether Mary Ann Jackson had children; I presume she is dead.

"The other daughter, Margaret, married a Pearce; both dead; they had issue; I knew two, William Ward and another, Richard and James; the latter are living; I think; the others, I cannot say.

"Another daughter married a Henry Pearce, also dead; left children, several, one Henry.

"I understood John Parrock died in Philadelphia; he was over age when he died."

Miraba Edwards objected to; one of the plaintiffs.

Elizabeth Clark sworn. "I am 54 or 55; don't know how many children Peter Cheesman had; never heard."

Letetia Hood, sworn. "I know Peter Cheesman's family; his wife's name was Sarah Smallwood; some relation; I know Beersheba Parker, widow of Parker; I knew Mary Ann Jackson; had Seward, and Ann, and Joseph, and William, and Mary Ann; I knew Miraba Pearce, Josiah Pearce's widow; I know Richard Pearce; I know Martha Pearce, who married a Pearce; I knew Mrs. Morris to be one of the family; I knew Elizabeth Powell, she was a relation of the family; I understood she was the daughter of Margaret Pearce."

Close, reserving the right to prove one or two heirs.

The defendants gave no evidence; and thereupon the counsel for the said plaintiffs asked the said learned judges to give in charge to the jury as follows, viz:

"If the jury believe the evidence given by the plaintiffs of pedigree, then, under the true construction of the will of James Parrock, the plaintiffs are entitled to recover; it being proved by plaintiffs that both John Parrock, the grandson, and Sarah Parrock, the granddaughter, died over age, and without issue."

But the said learned judges refused to charge the jury as so requested, and gave in charge to the jury, that under the said will the plaintiffs could not recover, inasmuch as the devise over to plaintiffs' ancestors, in the said will mentioned and contained, never took effect, by reason of the devisees therein named, viz: *John Parrock* and *Sarah Parrock*, having both arrived at full age.

And thereupon the counsel for the said plaintiffs did then and there except to the aforesaid charge and opinion of the said court; and inasmuch as the said charge and opinion, so excepted to, do not appear upon the record, the said counsel for the said plaintiffs did then and there tender this bill of exceptions to the opinion of the said court, and requested the seals of the judges aforesaid should be put to the same, according to the form of the statute in such case made and provided.

And thereupon the aforesaid judges, at the request of the said counsel for the said plaintiffs, did put their seals to this bill of exceptions, pursuant to the aforesaid statute in such case made and provided, this twenty-sixth day of October, anno domini 1846.

R. C. GRIER, [L. S.]
J. K. KANE. [L. S.]

And thereupon the jurors aforesaid, on their oaths and affirmations aforesaid, respectively do say, that they find for defendant, with $\frac{6}{100}$ costs.

Therefore, it is considered by the court here that the said John Doe take nothing by his declaration aforesaid, but be in mercy, &c. And that the said Thomas Watson go thereof without day, and that he recover against the said John Doe the sum of twenty-six $\frac{99}{100}$ dollars for